

## TRANSFORMATIVE TOOLS: A tool kit for Transformative Mediation

Joel Green

This article is unique in furnishing practitioners a veritable handbook for using the transformative model of mediation (although also useful in evaluative mediation). The content of the article is particularly effective for mediations involving ongoing relationships such as family and workplace mediation as well as businesses wishing to continue doing business after resolving their differences.

It is rarely possible to pinpoint the exact moment when a new sociological, psychological, political, economic or mediation movement begins. Threads of new approaches are gradually woven into a discipline's fabric before being memorialized in a defining article or text. However, if such a moment exists for the transformative model of mediation, it is perhaps the publication in 1994 of *The Promise of Mediation*, by Robert Baruch Bush and Joseph Folger. This article will not elaborate much on the transformative style; other publications have handled that task quite well. Suffice it to say that the transformative method recognizes and empowers parties in the broadest possible way. Certainly, aspects of this method are incorporated into traditional mediation techniques, but while those traditional methods have elements of direction, judgment, evaluation and opinion, transformative mediation eschews these approaches, embracing instead the parties' ability to control the process and exchange views with each other. Where problem-solving and reaching settlement is the primary goal of directive mediation<sup>1</sup>, building relationships and mutual understanding is the goal of a transformative mediation intervention.

It seems to me that transformative mediation is best suited to ongoing situations, such as husband/wife, employee/employer, or companies conducting regular business with each other. While transformative mediators maintain the method is suitable in all mediations, I still have doubts that parties accustomed to directive mediation, whose sole desire is to resolve a one-off dispute and never see each other again, would have the patience for a session protracted by the constant restating and questioning fundamental to transformative mediation. After a mediator repeated for the third time: "So, what I hear you saying Mr. President/CEO is that the company you acquired hid certain liabilities and major equipment defects," wouldn't the expected response be something like: "What, is there some damn echo in here?"

Three final observations before we open the tool kit: First, these methods are indeed different. I would venture to say that while many transformative techniques would be useful to a directive mediator, directive methods would be anathema in all transformative sessions. For example, the United States Postal Service requires mediation sessions solely along transformative guidelines and will not continue with mediators using directive techniques. The tools presented in this article could be useful in both circumstances. Second, good mediators already use many of the transformative techniques and some of what follows will be familiar. Third, as suggested in the first paragraph, transformative techniques did not explode onto the scene *de novo* like some sort of mediation big bang. We see many elements of psychotherapy, marital counseling, and brainstorming paving the road to the transformative techniques. In fact, the Peace Corps trained us to assist our neighbors in raising issues of concern to them, observing their "felt needs" and facilitating the pursuit of their goals. Ultimately transformative techniques incorporate a methodology utilized by effective people throughout the ages.

Obviously this article can not serve as a training guide in the transformative style. It assumes some familiarity with transformative mediation, or at least the recognized value of open-ended questions as a tool to get parties talking with each other. This article also does not deal with clues that suggest avenues for mediators to pursue. Examples of

this are participants' statements such as "You don't understand," "I just don't know what to do," and one of my favorites: "This is useless and I'm leaving."

This article also does not deal with openings, although after customary discussions of the mediators role,<sup>2</sup> confidentiality, and caucusing<sup>3</sup>, two effective openings on transformative mediation are: "What would you like to get out of this mediation?" or "How would you like to proceed?"

## THE TOOLS

What follows is a crib sheet, if you will, of guidelines and questions which will help you move a transformative mediation session along. I keep it in a manila folder and refer to it from time to time to keep myself on track and come up with different ways of facilitating the mediation. In transformative mediation, open-ended questions<sup>4</sup> allow the parties to express themselves. Once you begin the session, these tools and others you invent, should help move the process along. There are two types of phrases: The solid bulleted phrases are reminders of what a transformative mediation is. The circle bulleted phrases are things you can say. There is some intentional repetition which helps during quick glances at the crib sheet.

One cautionary note: Mediation is an art, not a rote exercise. These tools are suggested only to assist and not to replace a mediator's technique, skill, experience, perception, and most of all--humanity.

1. Transformative style: Listen, support, encourage, explore, invite, follow, open, welcome (not pushing, telling, controlling).
2. Listen, listen, listen.
3. Don't make suggestions, express wants or needs. Don't be evaluative, judgmental, directive, or make recommendations.
4. Ask questions. Be in the moment. Listen. Look for clues. Rephrase.
5. Follow, don't lead. Go where parties want to go, when they want to go there.
6. Don't interrupt.

What do you expect to get from mediation?  
What would you like to get out of mediation?  
Why do you think mediation might be helpful?

7. Restate what the parties want to do, or want you to do.

Give me an idea how you would like me to help you?  
I'm hearing you say....  
So, you are saying.....?  
I'm wondering where you'd like to go with this?  
This is your process. It can go any way you choose.  
If it's okay with you, we could come back to this later.  
So you both agree on x, y, z ? <sup>5</sup>

Would you like to discuss one issue at a time? Or one speaks and the other listens? Or just discuss? Whatever you want?

Let me summarize to see if I understand.

You've been saying some important things, let me see if I get it.

We've talked about the fact that....

I sense something else/more is going on here.<sup>6</sup>

You seem to still be feeling quite a bit of discomfort with....

I'm wondering what choices you lean to?<sup>7</sup>

I'm wondering....

8. Paraphrase; summarize; open-ended questions (not yes or no)
9. o Is this the direction you are going....?
10. o It sounds like you are saying...?
11. o Is that what it would take...?
12. o That's something we can talk about.
13. o ....would that assist you?
14. o It sounds like you're saying xyz and [the other party] may not be thinking that way.
15. o Where do you want to go?
16. o Is this the way you'd like to work together in the future?<sup>8</sup>
17. o Is there anything which might make you more comfortable?
18. o Do you want to continue talking about this?
19. o What do you like about working together? What do you like about the other person?<sup>9</sup>
20. o What do you think?
21. o There seems to be something bothering you about xyz, what are some of those factors?
22. o [Parties argue. Let them.] Is this being helpful? (you ask)
23. Don't fix.
24. Slow down. Invite elaboration. Restate. Other respond. Explore party comments.

So you both agree that....?

What specifically bothers you?

Ok, what do you want to do about this?

Where do you want to go here?

25. Don't interrupt.

I see you have a lot to say... Do you mind proceeding this way.

I hear what you're saying...

Party: "You don't understand." Mediator: Actually I don't understand, could you perhaps tell me?

26. When a question is raised, focus on it.

Party: "It's very upsetting." Mediator: Perhaps you'd like to tell X and me how upsetting it is.

Gee, what happened here?

27. Don't use "I" -- use "you". It seems as if you...

What would help you understand?

What would be helpful?

Party: "What do you think?" Mediator: My role is to assist you with your ideas and thoughts.

[With lots of issues:] I see there are several issues concerning you. Is there any one issue you'd like to explore? Is there one issue most important to you, you'd like to explore? <sup>10</sup>

Do the two of you have the same understanding about xyz?

Do you think this conversation is helpful? <sup>11</sup>  
What do you need to get this on track?  
Do you have any ideas to help this along? <sup>12</sup>  
Well, did you think this list was helpful? Hope so. <sup>13</sup>

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#### **Endnotes:**

\* The author wishes to thank Melvin A. Rubin and Gary Canner for training him to be a mediator and Paul Carbonneau and Melissa Brodrick for teaching him the transformative model of Mediation. While it is not customary to thank the same person twice in one footnote, I am indebted beyond words to Mel Rubin both for his example and support of my mediation career.

1. For want of a better term, this author considers "directive mediation" to be the opposite of "transformative mediation"

2. Which in Transformative Mediation can be as simple as "My role is to assist you in discussing your issues and concerns."

3. Although I'd be remiss not to mention that unlike Directive Mediation where Mediators enthusiastically separate parties, transformative techniques usually leaves it to the parties to suggest caucusing.

4. Open-ended questions cannot be answered with a "yes" or "no." Closed ended questions which can be answered that way tend to stop dialogue in its tracks.

5. It's helpful to have parties acknowledge agreements on little points, even if that agreement is the basis on which to proceed.

6. In ongoing situations there is usually something else going on besides the specific issue seemingly needing resolution. Invariably it has to do with people's perception of mistreatment.

7. Allow the parties to articulate, create and select options.

8. If the parties improve their working relationship, the transformative session is successful--even without specific issue settlement.

9. Don't overlook having the parties speak favorably about each other. Sometimes one compliment amid antagonism can reverse hostilities.

10. Parties sometimes use the kitchen sink approach and these questions enable focus on one item at a time. Thanks to Mel Rubin for this one.

11. It's important to let the parties vent. There is a tendency to want to cut off emotional displays. The reasons for this are complex and range from a sense that accord and reconciliation cannot emanate from discord to individual psychopathies of great discomfort with strong emotions of others. In transformative sessions the parties should be allowed to emote. Usually, they finish their outburst and feel better for it. Plus, it helps the other side to see how strongly something is felt. In the rare circumstances you wish to terminate emotional expression or divert the conversation to more productive areas, this phrase is useful.

12. When things are mired, it often beneficial to solicit the parties' help. Ask for it. Thanks again Mel Rubin.

13. This was a plant. If you enjoyed this article, you're welcome to let me know by email: [jl@gate.net](mailto:jl@gate.net), but only if you want to, when you want to, and if you think it's helpful <g>.